



This Agreement is NOT a License

**NONDISCLOSURE AND SOFTWARE USAGE AGREEMENT
FOR RELEASE OF ITAR SOFTWARE
(Government Purposes Only - Intra-NASA Release)**

WHEREAS, NASA _____ (hereinafter "RECIPIENT") has requested that NASA Marshall Space Flight Center (hereinafter "NASA") release certain COMPUTER SOFTWARE; and

WHEREAS, NASA Policy Directive (NPD) 7120.4 and NASA Procedural Requirement (NPR) 2210.1 authorize NASA to release SOFTWARE;

NOW THEREFORE, NASA and RECIPIENT (together "PARTIES") agree as follows:

I. DEFINITIONS. For purposes of this Agreement,

A. "NASA SOFTWARE" is defined as the COMPUTER SOFTWARE, except EXCLUDED INFORMATION, described as follows:

Name: Telescience Resource Kit (TReK) Software
Version: Version 4,0,
NASA Case No.: MFS-32745-1

B. "TECHNICAL DATA" is defined as any DATA, except EXCLUDED INFORMATION, necessary for the development, production, or use of the NASA SOFTWARE, and includes the following:

NA

C. "NASA POINTS OF CONTACT (POC)" is identified as the following:

<u>NASA Technical POC*</u>		<u>NASA Software Release Authority</u>	
Name:	<u>Michelle Schneider</u>	Name:	<u>Danny Garcia</u>
Address:	<u>NASA MSFC EO50</u>	Address:	<u>NASA MSFC ZP30</u>
City/State/Zip:	<u>Huntsville AL 35812</u>	City/State/Zip:	<u>Huntsville AL 35812</u>
Phone:	<u>256-544-1535</u>	Phone:	<u>256-544-4138</u>
E-mail:	<u>michelle.schneider@nasa.gov</u>	E-mail:	<u>danny.garcia@nasa.gov</u>

D. "RECIPIENT SOFTWARE CUSTODIAN/USER" is identified as:

Name:	_____	City/State/Zip:	_____
Address:	_____	Phone:	_____
Address:	_____	E-mail:	_____

- E. "AUTHORIZED USERS" is defined as (1) RECIPIENT's employees and (2) RECIPIENT'S contractors, subject to Section III.B, below.
- F. "CONTRACTOR RECIPIENT" is defined as those AUTHORIZED USERS who are RECIPIENT's contractors, subject to Section III.B, below.
- G. "COMPUTER SOFTWARE" is defined as a collection of one or more programs or microprograms fixed in any tangible medium of expression that comprises a sequence of instructions (source code) to carry out a process in, or convertible into, a form executable by an electronic computer (object code).
- H. "DATA" is defined as recorded information, regardless of form, the media on which it may be recorded, or the method of recording.
- I. "EXCLUDED INFORMATION" is defined as information that:
1. Was in the public domain prior to the effective date of this Agreement;
 2. Was known to RECIPIENT prior to the effective date of this Agreement, provided that RECIPIENT shall have the burden of establishing such prior knowledge by competent written proof;
 3. Becomes part of the public domain subsequent to the effective date of this agreement through no act or omission of RECIPIENT;
 4. Is made available to RECIPIENT, under no obligation of confidentiality, by a third party subsequent to the effective date of this agreement; or
 5. Is independently developed by RECIPIENT, provided that RECIPIENT shall have the burden of establishing such independent development with written documentation.
- J. "THIRD PARTY(IES)" is defined as other than a U.S. government entity or AUTHORIZED USER.

II. **PURPOSE.** This Agreement is for the nondisclosure and use of NASA SOFTWARE and TECHNICAL DATA for U.S. Government purposes only.

III. **RIGHTS GRANTED TO RECIPIENT.** In consideration for RECIPIENT'S obligations, as described below, NASA grants RECIPIENT the right, subject to any third party intellectual property rights to:

- A. Use, reproduce, and prepare derivative works of the NASA SOFTWARE and TECHNICAL DATA for RECIPIENT's U.S. Government purposes.
- B. Distribute the NASA SOFTWARE and TECHNICAL DATA to RECIPIENT's AUTHORIZED USERS provided, however, that RECIPIENT shall use a Government Purposes – Project Release Software Usage Agreement when releasing the NASA SOFTWARE and TECHNICAL DATA to a CONTRACTOR RECIPIENT.

IV. **RECIPIENT'S OBLIGATIONS.** In consideration for the rights granted to RECIPIENT above, RECIPIENT agrees as follows:

- A. RECIPIENT shall inform AUTHORIZED USERS of the obligations specified in this Agreement. RECIPIENT shall require that CONTRACTOR RECIPIENTS be bound by the restrictions specified herein through the appropriate Software Usage Agreement (and in accordance with NPR 2210.1).
- B. **Neither the NASA SOFTWARE nor TECHNICAL DATA are in the public domain**, and nothing in this Agreement shall be construed as making either available to the public without restriction.
- C. The restrictions on use, disclosure, and distribution imposed by this Agreement shall apply to any COMPUTER SOFTWARE or DATA developed by RECIPIENT that incorporates any portion of the NASA SOFTWARE or TECHNICAL DATA.

D. Use of NASA SOFTWARE and TECHNICAL DATA

- 1. Other than as specified in Section III, RECIPIENT and AUTHORIZED USERS shall not use, reproduce, or distribute the NASA SOFTWARE or TECHNICAL DATA without the express prior written approval of the NASA Software Release Authority identified above.
- 2. RECIPIENT shall hold the NASA SOFTWARE and TECHNICAL DATA in confidence, and agrees not to disclose the NASA SOFTWARE or TECHNICAL DATA to THIRD PARTIES, without the written permission of the NASA Software Release Authority identified above. EXCLUDED INFORMATION is excluded from the foregoing restrictions.
- 3. RECIPIENT agrees that the NASA SOFTWARE and TECHNICAL DATA are intended for domestic use only and shall not be made available to anyone outside of the United States. In addition, within the United States, the NASA SOFTWARE and TECHNICAL DATA shall not be made available to foreign persons (as defined by 22 CFR §120.16).
- 4. Upon termination of any contract under which a CONTRACTOR RECIPIENT has received access to the NASA SOFTWARE or TECHNICAL DATA, if requested by NASA, RECIPIENT shall provide to NASA the CONTRACTOR RECIPIENT'S certification that the NASA SOFTWARE and TECHNICAL DATA have been destroyed and/or deleted from the computer systems on which the NASA SOFTWARE or TECHNICAL DATA resided.

E. Derivative Works and Bug Fixes

- 1. RECIPIENT shall document any changes to the NASA SOFTWARE, including derivative works and bug fixes, in the source files. Any change to the NASA SOFTWARE should adhere to the original coding standards, although upgrading the syntax or style to take advantage of new language features is encouraged where appropriate. All copyright notices, disclaimers, notices and in-line documentation shall remain part of the NASA SOFTWARE in its changed or derivative form.
- 2. If RECIPIENT changes the NASA SOFTWARE or TECHNICAL DATA, including by making derivative works or bug fixes, RECIPIENT shall provide the complete changed version to NASA by providing it to the NASA Software Release Authority identified above.
- 3. RECIPIENT agrees to make reasonable efforts to report any bugs discovered in, or bug fixes made to, the NASA SOFTWARE or TECHNICAL DATA to NASA.

- F. **Notices.** RECIPIENT must retain and reproduce the following notices in all copies of NASA SOFTWARE, TECHNICAL DATA, and derivative works thereof, or provide said language with all copies of NASA SOFTWARE, TECHNICAL DATA, and derivative works thereof:

1. The following general notice:

This software may be used, reproduced, and provided to others only as permitted under the terms of the agreement under which it was acquired from the U.S. Government. Neither title to, nor ownership of, the software is hereby transferred. This notice shall remain on all copies of the software.

- V. **THIRD-PARTY RIGHTS.** If the NASA SOFTWARE or TECHNICAL DATA includes a copyright notice, or other restrictive marking, identifying the NASA SOFTWARE or TECHNICAL DATA—or some portion of either—as a third party work, said third party work shall be governed by the terms and conditions of said copyright or restrictive marking. NASA disclaims all warranties and liabilities regarding third party COMPUTER SOFTWARE or DATA, if present in the NASA SOFTWARE or TECHNICAL DATA, and distributes it “as is.”

VI. **EXPORT CONTROL.**

- A. Within the United States, the NASA SOFTWARE and TECHNICAL DATA shall not be made available to foreign persons (as defined by 22 CFR §120.16).
- B. Furthermore, the NASA SOFTWARE and TECHNICAL DATA shall not be provided to any person (as defined by 22 CFR §120.14) on the Consolidated Screening List available at www.export.gov (including but not necessarily limited to: the Bureau of Industry and Security, Denied Persons List, Unverified List and Entity List; Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons, and Changes to List of Specially Designated Nationals and Blocked Persons; Directorate of Defense Trade Controls, List of Statutorily Debarred Parties; Bureau of International Security and Nonproliferation, Federal Register notices for nonproliferation sanctions determinations).
- C. RECIPIENT understands that this SOFTWARE falls under the purview of the U.S. Munitions List (USML), as defined in the International Traffic in Arms Regulations (ITAR), 22 CFR 120-130, and is export controlled. It shall not be transferred to foreign nationals in the U.S. or abroad, without specific approval of a knowledgeable NASA export control official, and/or unless an export license/license exemption is obtained/available from the United States Department of State. Violations of these regulations are punishable by fine, imprisonment, or both. The ITAR notice provided on the SOFTWARE shall not be removed by RECIPIENT, and the ITAR notice shall remain on any modified versions of the SOFTWARE.
- D. Notwithstanding any provisions contained herein, RECIPIENT is hereby put on notice that export of any goods or DATA containing all or a portion of the NASA SOFTWARE and TECHNICAL DATA made available under this Agreement may require some form of export authorization from the U.S. Government before they are either sent outside of the United States or made available to nationals of a foreign country either within the United States or abroad. For purposes of the export laws, a person who has permanent resident status as defined in 8 U.S.C. §§ 1101(a)(20), and persons admitted to the United States on the basis of refugee status under 8 U.S.C. §§ 1157 and 1158 are U.S. persons and not foreign persons. Failure to obtain necessary export authorizations may result in criminal liability of RECIPIENT under U.S. laws. NASA neither represents that an authorization is

not required nor that, if required, it shall be issued. Nothing granted herein to RECIPIENT provides any such authorization license.

- E. RECIPIENT certifies that neither it nor any AUTHORIZED USERS to whom RECIPIENT distributes the NASA SOFTWARE or TECHNICAL DATA is a foreign person (as defined by 22 CFR §120.16) and is not listed on any of the aforementioned “denied Parties/persons” lists.

VII. **EFFECTIVE DATE.** The effective date of this Agreement shall be the date RECIPIENT executes this Agreement as set forth below.

VIII. **SIGNATORY AUTHORITY.**

- A. RECIPIENT agrees that a facsimile signature shall be valid and have full force and the same effect upon RECIPIENT as original signatures.
- B. The undersigned represents that he or she is a NASA civil servant, and has the authority to sign this Agreement on behalf of RECIPIENT.
- C. By signing below, the undersigned acknowledges the above terms and conditions on behalf of RECIPIENT.

Receipt Acknowledged on Behalf of RECIPIENT by:

Signature: _____
Name (printed or typed): _____
Title: _____
Date: _____
Address: _____
City/State/Zip: _____
Phone: _____
Fax: _____
E-mail: _____

**AFTER EXECUTING THIS AGREEMENT, PLEASE RETURN IT
TO THE NASA SOFTWARE RELEASE AUTHORITY IDENTIFIED ABOVE.**